

MONTANA LEGISLATIVE HISTORY

Chapter 308 19 83

Bill H _____ S 354

Original bill & history ____c

H. Committee on Judiciary

Hearing Date(s) 3-14 ☒ c

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 2-10 ☒ c

2-15 ☒ c

_____ c

_____ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

COMMITTEE ON SENATE JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
321	1-31-83	2-3-83	2-3-83	2-3-83					
326	1-31-83	2-7-83	2-7-83		2-7-83				
328	1-31-83	2-7-83	2-7-83		2-7-83				
347	2-3-83	2-16-83	2-18-83			2-18-83			
348	2-3-83	2-16-83	TABLED						
351	2-3-83	2-9-83	2-15-83			2-15-83			
352	2-7-83	2-10-83	2-10-83	2-10-83					
354	2-7-83	2-10-83	2-15-83			2-15-83			
366	2-7-83	2-10-83	TABLED						
371	2-7-83	2-11-83	2-15-83	2-15-83					
373	2-7-83	2-11-83	2-15-83	2-15-83					
381	2-9-83	2-14-83	2-15-83			2-15-83			
385	2-9-83	2-14-83	2-17-83		2-17-83				
386	2-9-83	2-15-83	2-15-83	2-15-83					
388	2-9-83	2-15-83	2-17-83			2-17-83			
389	2-9-83	2-14-83	2-14-83		2-14-83				

CONSIDERATION OF HOUSE BILL 369: Representative Sands advised that he was sponsoring this bill at the request of the Task Force on Corrections. The purpose of HB369 is to require that when a sentence is pronounced, the judge should clearly state his reasons for imposing that sentence. He advised that the Montana Canons of Judicial Ethics require that a judge state his reasons in controversial cases so as to avoid any conflicts in the future, and HB369 would adopt this same ethic.

There being no proponents or opponents present, the hearing was opened to questions from the Committee.

Senator Halligan wondered if a judge stated his reasons for imposing a sentence, if this would give the defendant an appealable element. He was advised that a defendant can always appeal to the sentence appeal board if he feels he's been treated unjustly.

ACTION ON HOUSE BILL 369: Senator Halligan moved HB369 BE CONCURRED IN. This motion passed with Senators Daniels, Mazurek and Shaw voting in opposition.

CONSIDERATION OF SENATE BILL 352: Senator Regan advised that she was sponsoring this bill at the request of the Foster Care Review Committee. Currently the review committee is comprised of a representative of the department, a representative of the youth court, a representative of a local school district and someone knowledgeable in the needs of children in foster care who is employed by any of the above. The review committee feels that the foster parent, if there is one, of the child whose care is under review, should be included in this committee as they are an important part.

There being no proponents or opponents present, and no questions from the Committee, the hearing was closed.

ACTION ON SENATE BILL 352: The Committee felt they were ready to consider executive action and Senator Berg moved SB352 DO PASS. This motion passed unanimously.

CONSIDERATION OF SENATE BILL 354: Senator Christiaens, sponsor, advised that this bill attempts to prioritise agister's and other liens over perfected security interests and other recorded liens. It would also provide for 30 days notice to the lienholder of record after completion of the work or service furnished. It was his opinion that this would bring the agister's lien more in line with reality and allow more time and better protection.

PROPOSERS: Bill Romine, representing the Recking Yards, reaffirmed the need for this legislation as the money should be paid only after the work is done.

There being no further proponents and no opponents, Senator Christiaens closed by stating the practical effects of extending time will assure all work is performed.

RECONSIDERATION OF SENATE BILL 225: SB225 had been sent back to the Committee for reconsideration. Senator Towe had proposed amendments. The Committee felt it should ask the Department of Institutions to comment on the proposed amendment and review Curt Chisholm's testimony from the February 1 hearing. The major concerns was for an early release of a voluntary committal. Senator Shaw stated the 10 days is an appropriate amount of time to detain a committal. Further consideration was deferred until a comment is received from the Department.

ACTION ON HOUSE BILL 307: The Chairman announced that the Committee was ready to consider executive action on HB307. Under the current sentencing statutes, a judge can defer or suspend a sentence and this should satisfy the Committee's concerns with the mandatory sentence requirement of the bill. Senator Daniels was still concerned with the small jails in Montana abusing a law such as this. The Committee concurred that this law should apply to city and county jails where there are five or more active participants but they should be excluded from Section 2 of the bill. Senator Shaw moved that page 2, line 16 should be amended by striking "or city or county jail." This motion passed with only Senator Galt voting in opposition. Senator Brown then moved that the title be amended to reflect this change by inserting the wording "and the crime of riot in a city or county jail" after the word "facility" in line 7. This motion passed unanimously. Senator Brown then moved that HB307 BE CONCURRED IN AS AMENDED. This motion passed unanimously.

ACTION ON HOUSE BILL 53: New prepared amendments were distributed and the damages section was reviewed. Senator Galt moved to adopt the proposed amendments. This motion passed unanimously. Senator Mazurek then moved HB53 BE CONCURRED IN AS AMENDED. This motion passed with Senators Daniels and Shaw voting in opposition.

FURTHER CONSIDERATION OF SENATE BILL 351: The Committee discussed the exclusion of psychiatrists' subjective opinion at trial. Senator Halligan especially felt that an expert opinion as to mental condition is important for a jury to hear.

ROLL CALL

JUDICIARY COMMITTEE

48th LEGISLATIVE SESSION - - 1983

Date 2-10-83

NAME	PRESENT	ABSENT	EXCUSED
Berg, Harry K. (D)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Daniels, M. K. (D)	✓		
Galt, Jack E. (R)	✓		
Halligan, Mike (D)	✓		
Hazelbaker, Frank W. (R)	✓		
Mazurek, Joseph P. (D)	✓		
Shaw, James N. (R)	✓		
Turnage, Jean A. (R)	✓		

Each day attach to minutes.

HB369, SB's 352, 354 and 366

VISITORS' REGISTER

(Please leave prepared statement with Secretary)

was taken on Senator Crippen's do pass motion. A tie vote was recorded. Senator Crippen then moved to TABLE SB313. A roll-call vote was taken and this motion carried with Senators Halligan and Mazurek voting in opposition.

ACTION ON SENATE BILL 351: The bill, as previously amended, was ready for consideration by the Committee. Senator Mazurek moved SB351 DO PASS AS AMENDED. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE BILL 354: The Committee discussed how SB354 gives priority to agisters' liens through many examples. The consensus was that there would not be a problem with small repairs, but larger amounts could be dangerous. Senator Berg suggested inserting a dollar limit. Concern arose with subsection (2) and the wording "30 days after payment is due." The Committee agreed that the language deleted from page 1, lines 14 and 15 should be reinserted. Various suggestions were given for the time period for notice. Senator Crippen moved to reinsert the original language on page 1, lines 14 and 15 and to increase the current 10 day provision to 30 days. This motion passed unanimously. The Committee felt the saving clause was appropriate as it now reads. Senator Mazurek moved SB354 DO PASS AS AMENDED. This motion carried unanimously.

ACTION ON SENATE BILL 373: The Committee agreed that SB373 is a good relief bill for title insurance companies. Senator Mazurek moved SB373 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 371: The intent of SB371 was discussed. It would allow a 14-year-old child to express their desires as to which parent they are placed with. It was agreed that a judge would not be bound by this provision. Senator Mazurek moved SB371 DO PASS. This motion carried with Senator Daniels voting in opposition.

ACTION ON SENATE BILL 381: The Committee discussed the need to refer to "a grandparent" so that all grandparents of a child could be granted visitation rights, rather than "one or both grandparents" as stated in the bill. Senator Hazelbaker moved to amend the bill to refer to "a grandparent." This motion passed unanimously. Senator Brown then moved SB381 DO PASS AS AMENDED. This motion also passed unanimously.

ACTION ON SENATE BILL 386: Senator Mazurek moved SB386 DO PASS. This motion carried unanimously.

ACTION ON SENATE BILL 391: It was agreed that there is a need to raise the felony threshold from \$150 to \$500 to provide for inflation and to ease the burden on district courts. The Committee felt the remainder of the bill was unnecessary. Senator Crippen moved to amend SB391 by retaining everything through section 8 and deleting

STANDING COMMITTEE REPORT

February 15,

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PRESIDENT

MR.

Judiciary

We, your committee on

having had under consideration Senate Bill No. 354

Christiaens

Respectfully report as follows: That Senate Bill No. 354

introduced bill, be amended as follows:

1. Page 1, line 15.
Following: "property,"
Insert: "within 30 days from the time of receiving the property,"
2. Page 1, line 23.
Following: "service"
Strike: remainder of line 23 through "and" on line 25.
Insert: "service"

And, as so amended,

DO PASS

y/c

STATUS SHEET

HOUSE JUDICIARY COMMITTEE

48TH Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 313	Allowing an arresting officer to immediately seize the driver's license of any person refusing to submit to a chemical test; etc.	2/28/83	Sen. Halligan	3/11/83	Be Concurred In As Amended	3/22/83
SB 326	To submit to the qualified electors of Mt. an amendment to allow the Mt. Supreme Court to discipline a justice or judge	2/14/83	Sen. Blaylock	3/1/83	Be Concurred In As Amended	3/1/83
SB 347	An act providing that a prescriptive easement cannot be acquired by recreational use	2/28/83	Sen. Galt	3/8/83	Tabled	3/14/83
SB 351	An act to limit opinion testimony of psychiatrists and other experts in criminal proceedings, etc.	2/28/83	Sen. Halligan	3/11/83	Be Not Concurred In	3/11/83
SB 352	An act to include as a member of a foster care review committee the foster parent of the child whose care is under review, etc.	2/28/83	Sen. Regan	3/10/83	Be Concurred In	3/10/83
SB 354	Revising the laws relating to priority of agisters' liens and liens of service over perfected security interests, etc	2/28/83	Sen. Christiaens	3/14/83	Be Concurred In	3/14/83

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March 14, 1983
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REPRESENTATIVE SPAETH commented that it is kind of screwy the way it is written and he was not sure who was right or wrong.

There were no further questions and the hearing was closed.

SENATE BILL 354

SENATOR CHRISTAENS said that this bill would extend the time an agister will have to file a lien from ten days to thirty days. He explained that, as it stands right now, if a wrecking yard receives a wrecked vehicle, they only have ten days to file the agisters' lien. He also stated that the consumer has an additional twenty days to take care of this payment.

BILL ROMINE, representing the Montana Automobile Dismantling and Recycling Association, informed the committee that this bill came up as he was doing some research and found that the agisters have a very short period of time in which to notify the lienholders of a lien. He explained that if you take your automobile down to a mechanic, who performs the work on it, he has a lien now depending upon his possession; he is not required to give it to you until you pay the bill; this is an old, old lien and came about from dealing with horses and cattle. He indicated that the problem with existing law is that if they need to order a part, it may take ten days or two weeks to find a part; and, in the meantime, under present law, the mechanic needs to notify the bank that they are going to claim a lien, which will cut off the bank's lien. He said that before the Senate amended it, it would have provided that you had the time from when the bill was presented, but the Senate felt that was too long a period of time. He emphasized that all this does is extend the time.

There were no further proponents and no opponents.

SENATOR CHRISTAENS closed.

REPRESENTATIVE KEYSER thought we had a lien statute before the legislature this year and he wondered if this was in conflict. SENATOR CHRISTAENS responded that it was not - that was an artisan lien and this is an agisters' lien.

REPRESENTATIVE ADDY questioned if the garageman complies with subsection 1, does that lien take priority over perfected security interests. MR. ROMINE replied that it would under existing law and this is similar to a mechanics' lien, wherein you have performed work on a vehicle where it will improve its value, you are entitled to the return of your money.

REPRESENTATIVE EUDAILY asked what does it mean on line 13, wherein it states, "The lien hereby created shall not take precedence over perfected security interests". MR. ROMINE said to read on down to line 15, wherein it reads, "unless within 10 days from the time of receiving the property, the person desiring to assert a lien thereon shall give notice in writing to said secured party or other lienholder". He contended that that was the problem - if he does not protect his lien by giving notice to the bank, he has a lien that is second; but if he gives notice to the bank, he does have a lien and if they do not redeem the property, then he can have the property sold at a sheriff's sale and from the proceeds of that sale, he would get his money first, and the bank second.

REPRESENTATIVE ADDY asked if he knew of any supreme court case under this statute. MR. ROMINE replied that he was not aware of any.

There were no further questions and the hearing on this bill was closed.

SENATOR CHRISTAENS indicated that REPRESENTATIVE WALLIN would carry this on the floor of the House.

EXECUTIVE SESSION

SENATE BILL 354

REPRESENTATIVE DARKO moved that this bill BE CONCURRED IN. The motion was seconded by REPRESENTATIVE JAN BROWN.

REPRESENTATIVE HANNAH declared that he was not sure there was a problem here and he said on line 14, there was reference to the Uniform Commercial Code and he wondered what would happen if he takes his car in and the bill is \$700.00 and they did not call me and say they were going to do the work. REPRESENTATIVE ADDY replied that this deals with the

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relationship between the car dealer and the bank - who has the first right to the lien; and it does not affect the situation that he is talking about. He explained that previously the car dealer had to give notice to the bank within ten days, and this would only extend that to thirty days. He advised that you would have to have possession of the object in order to claim a lien.

REPRESENTATIVE HANNAH asked if he could get his hands on the car, could he get this lien. REPRESENTATIVE ADDY replied that if he has possession of the car, yes, but this deals with giving notice to the bank.

REPRESENTATIVE CURTISS wondered if this would apply if someone fed an animal for several days for someone else. REPRESENTATIVE ADDY answered that that is an agisters' lien and that it was used for horses before it was used for cars.

REPRESENTATIVE JENSEN wondered about a stray being impounded and maintained if that would come under this statute. REPRESENTATIVE ADDY said that it has to be expressed or implied contract.

REPRESENTATIVE EUDAILY asked where was the protection for the consumer in this case if he goes in and gets an estimate from the garageman that the bill is going to be \$300.00; he goes back to pick up the car and the bill comes to \$1,000.00. REPRESENTATIVE ADDY replied that there is another statute that states when you get a written estimate from the garageman that it can only be varied by 10 per cent without the consumer's prior approval. He noted that as a practical matter you will be fighting with the garageman who still has your car, so a compromise must be worked out. REPRESENTATIVE JENSEN commented that you can go to small claims court.

CHAIRMAN BROWN said that this bill would not affect this anyway.

The motion carried unanimously.

SENATE BILL 371

REPRESENTATIVE JAN BROWN moved that this bill BE CONCURRED IN. REPRESENTATIVE HANNAH seconded the motion.

STANDING COMMITTEE REPORT

March 14, 1983

MR. **SPEAKER**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **354**

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"AN ACT REVISING THE LAWS RELATING TO PRIORITY OF AGISTERS' LIENS
AND LIENS OF SERVICE OVER PERFECTED SECURITY INTERESTS AND OTHER
RECORDED LIENS; AMENDING SECTION 71-3-1202, MCA."

Respectfully report as follows: That **SENATE** Bill No. **354**

BE CONCURRED IN

XXXXX
DO PASS

STATE PUB. CO.
Helena, Mont.

DAVE BROWN Chairman.

COMMITTEE SECRETARY

